

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

HAYDEE RETE FLORES,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-72775

Agency No. A76-674-939

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Haydee Rete Flores, a native and citizen of Peru, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings and reconsider its previous decision denying her application

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for cancellation of removal. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen or reconsider. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's determination that the evidence Flores submitted with her motion to reopen would not alter its prior discretionary determination that she failed to establish the requisite hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 600 (9th Cir. 2006) (holding that 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from reviewing the denial of a motion to reopen where "the only question presented is whether the new evidence altered the prior, underlying discretionary determination that [the petitioner] had not met the hardship standard.") (Internal quotations omitted).

The BIA was within its discretion in denying Flores' motion to reconsider because the motion failed to identify any error of fact or law in the BIA's prior decision affirming the immigration judge's ("IJ's") order denying cancellation of removal. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

We lack jurisdiction to review the BIA's underlying order dismissing Flores' direct appeal from the IJ's decision because the instant petition for review

is not timely as to that order. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1258 (9th Cir. 1996).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.